

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case No. 1:18-cv-910**

THERESA SCHMITZ,)	
)	
Plaintiff,)	
)	AFFIDAVIT OF
v.)	MARK GOULD
)	
ALAMANCE-BURLINGTON)	
BOARD OF EDUCATION,)	
)	
Defendant.)	

I, Mark Gould, having been duly sworn, do hereby state as follows:

1. My name is Mark Gould. I am a citizen and resident of Alamance County, North Carolina. I am not a minor. I am under no legal disability. I am fully competent to make this Affidavit, which is based on my own personal knowledge.

2. I am currently a teacher for Orange County Schools. I was employed by the Alamance-Burlington Board of Education from 08/01/2012 to 11/29/19.

3. I was the principal at Sylvan Elementary from 6/29/15 to 11/29/19.

4. At Sylvan, I and the other staff members placed a heavy emphasis on collaboration and consistency of educational practices. Staff were expected to work together to follow district and school-wide best practices and to ensure consistency in instruction for each grade level. These expectations were conveyed to all staff members.

5. At the beginning of the 2016-17 school year, Sylvan had two vacancies for fourth grade teachers. I hired Ms. Schmitz to fill one of those vacancies partway

through the school year. She began work on October 27, 2016.

6. The instructional day at Sylvan ended at 2:30 pm, but the teacher workday was from 7:20 am to 3:20 p.m. Following the instructional day, teachers were expected to assist with carpool pickup on a rotating basis, assist with other dismissal tasks, and participate in planning with other teachers and staff.

7. Pursuant to state standards, for teachers on the full observation cycle, which included Ms. Schmitz, I was expected to conduct formal observations in the classroom several times a year, record ratings on specific defined elements and standards, and provide feedback and coaching based on the observations.

8. My practice was not to conduct a formal observation in the first few weeks of a teacher's tenure, so that the teacher would have an opportunity get acclimated and adjust to the new role. I followed this practice with Ms. Schmitz, and so did not conduct a formal observation until early December, approximately five weeks after she began.

9. Consistent with my role as a school leader, I did informally observe Ms. Schmitz from the beginning of her tenure (as well as the other teachers in the school).

10. While I did not observe any major issues during the early part of the school year, I did need to address a few minor issues with Ms. Schmitz, such as picking her students up from electives on time and ensuring she was present for end-of-day duties.

11. I also received complaints from the other fourth grade teachers based on their interactions with Ms. Schmitz. They expressed that Ms. Schmitz would leave immediately at the end of the day and was not present or engaged in planning sessions and discussions of lessons.

12. When I sought to provide feedback to Ms. Schmitz based on my observations and these reports, she was very confrontational and defensive. She refused to take

any feedback in a constructive manner, and instead sought to argue or justify everything that was raised.

13. I found the manner in which Ms. Schmitz responded to feedback to be unprofessional and inappropriate for a teacher.

14. The unprofessionalism and inappropriate interpersonal interactions continued throughout Ms. Schmitz's tenure at Sylvan.

15. Towards the end of November, I became aware that Ms. Schmitz's son had been diagnosed with a brain tumor and was having surgery.

16. On November 28, 2016, Ms. Schmitz requested that she be permitted to leave at 2:30 pm for the remainder of that week in order to assist with caring for her son. This meant she would miss the end-of-day duties such as assisting with carpool pickup, as well as miss planning time with her colleagues.

17. While at times teachers and other staff have asked to leave early for isolated events - such as doctor's appointments - I had never before had a teacher ask to leave early every day for a week.

18. However, under the circumstances, I agreed to allow Ms. Schmitz to leave early for the week requested.

19. During that week, I conducted an announced observation of Ms. Schmitz on December 2.

20. Observations are recorded in the NC Educator Effectiveness System ("NCEES"), and teachers are rated on a number of specific standards, each with various elements supporting those standards.

21. There is also an opportunity for written comments from the evaluator.

22. The expectation in ABSS is that teachers will receive at least a 'Proficient' rating on each standard.

23. For the first formal observation, Ms. Schmitz was rated as Proficient on some elements, but as

'Developing' (the level below Proficient) on several others, including elements relating to collaboration with other educators and professional development.

24. My written comments echoed the informal feedback I had attempted to provide regarding consistency in the classroom and participation with Ms. Schmitz's colleagues in her Professional Learning Community (PLC).

25. When a teacher receives Developing ratings on some elements, the expectation is that school administrators and other teachers will provide feedback and coaching, and that the teacher will incorporate that feedback into improving her performance in the future.

26. Unfortunately, Ms. Schmitz continued to be non-receptive to feedback or coaching and continued performing at a level below expectations.

27. The following week, Ms. Schmitz emailed me late in the evening on Monday, December 5, to ask if she could continue to leave work early for another week.

28. I was concerned about the burden that her unavailability would place on her teammates, and so I indicated I was hesitant to allow her to do so. Nonetheless, Ms. Schmitz left early the following day without permission.

29. I informed Ms. Schmitz that I had not approved her leaving early, and I offered to discuss with her how we might be able to move forward. Instead of discussing with me, however, Ms. Schmitz elected to stay home from work the next day and contact Human Resources.

30. My understanding is that Human Resources informed Ms. Schmitz she would need to take half-day leave if she wished to continue leaving work early, which she did for another week and a half.

31. At no point was Ms. Schmitz prohibited from leaving work early to care for her son.

32. Following her return to full days, Ms. Schmitz continued to struggle with the areas previously -

participation and attention to planning, engagement with other team members, collaboration in preparing for instruction, consistency of instruction, and her approach to student discipline.

33. I continued to provide feedback to Ms. Schmitz regarding areas where she had room for growth. My feedback was not based on her relationship with her son, but was appropriately directed at core expectations that I and the school system had for teachers.

34. Ms. Schmitz continued to resist any feedback or coaching, and her confrontational manner continued.

35. On March 7, 2016, I conducted a second formal observation of Ms. Schmitz. The second observation revealed similar concerns about lesson planning and participation with her PLC, as well as continued concerns about Ms. Schmitz's approach to discipline and its effect on instruction.

36. Again, instead of receiving feedback in a constructive manner, Ms. Schmitz responded by accusing me of rating her low because she was sending kids to the office and I did not want to do my job.

37. This statement was inaccurate - our school used a Positive Behavior Intervention Support (PBIS) model, which meant that teachers should use positive behavior interventions when disciplinary issues may arise. Instead of following the school's approach, Ms. Schmitz would inappropriately send students to the office, to other classrooms, or out in the hallway for minor disciplinary issues, which meant those students missed out on instructional time.

38. Following the second formal observation, in consultation with Human Resources I prepared a Pre-Non-Proficient Memo for Ms. Schmitz. This is a document that is provided to teachers who are at risk of receiving a rating below Proficient on their summative evaluation, which could lead to a recommendation for non-renewal.

39. The memo I provided to Ms. Schmitz identified specific areas of concern relating to her role as a classroom teacher. I also included specific action steps relating to those areas of concerns that would enable Ms. Schmitz to improve as a teacher.

40. It was my hope that Ms. Schmitz would take concrete steps to implement the feedback provided in the memo and work to improve her performance.

41. However, Ms. Schmitz continued to resist all constructive feedback, and continued to communicate with me in an inappropriate and confrontational manner.

42. I conducted a third and final formal observation on April 5, 2017. While Ms. Schmitz showed improvement in some areas, there were still significant concerns with use of data to inform small group instruction, student engagement, and monitoring of student activity.

43. Ultimately, based on my formal observations, a peer observation conducted by a fellow teacher, the Pre-Non-Proficient Memo, reports from her colleagues, my own interactions with Ms. Schmitz, and a continued lack of improvement in response to appropriate feedback, I made the determination that I would recommend that Ms. Schmitz not have her contract renewed.

44. My recommendation was not based on Ms. Schmitz's relationship with her son, but on her continued failure to meet the expectations of her position and her continued lack of improvement towards meeting those expectations.

45. I conveyed that determination to Human Resources, and along with Dawn Madren arranged a meeting with Ms. Schmitz to discuss that recommendation and the process moving forward.

46. During the meeting, I allowed Ms. Madren to lead the discussion. Ms. Schmitz did not engage in a substantive discussion or respond to the concerns that had been reiterated in the meeting.

47. Ms. Madren explained to Ms. Schmitz that she had the option of resigning, and that if she elected not to resign, the next step would be that her name would be included on a list of individuals recommended for non-renewal that would be submitted to the superintendent.

48. At the end of the week, Ms. Schmitz did elect to resign.

49. At the meeting, Ms. Schmitz had asked about receiving a letter of recommendation. She later followed up with me and Ms. Madren on that request.

50. At the end of the school year - after Ms. Schmitz had already made the decision to resign - I prepared a reference letter based on a template letter I found online and provided it to Ms. Schmitz.

Further the affiant sayeth not.

This the 31st day of March 2021.


Mark Gould

STATE OF NORTH CAROLINA
COUNTY OF ALAMANCE

Sworn to and subscribed before me
this 31st day of March, 2021.


Notary Public

(Official Seal)

My Commission Expires: 1/27/2026.

